



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Proposed Buy America Waiver

[Docket No. FTA-2011-0064]

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed Buy America waiver.

SUMMARY: The Philadelphia Center City District (CCD) has asked the Federal Transit Administration (FTA) to waive its Buy America requirements as applied to a proposed contract award for the renovation of Dilworth Plaza adjacent to City Hall in Philadelphia, Pennsylvania. More specifically, CCD is seeking a waiver for the procurement of glass panels needed to construct two structural glass pavilions covering stairs leading from the surface level to underground transit stations operated by the Southeastern Pennsylvania Transportation Authority.

DATES: Comments must be received by November 23, 2011. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following means, identifying your submissions by docket number FTA-2011-0064. All electronic submissions must be made to the U.S. Government electronic site at www.regulations.gov. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site:* www.regulations.gov. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493-2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Docket Operations, M-30, Room W12-140, Washington, DC, 20590-0001.

(4) *Hand Delivery:* Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2011-0064. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to www.regulations.gov. For more information, you may review DOT’s complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 Fed. Reg. 19477), or visit www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Jayme L. Blakesley at (202) 366-0304 or jayme.blakesley@dot.gov.

SUPPLEMENTARY INFORMATION:

The purpose of this Notice is to seek public comment on whether the Federal Transit Administration should waive its Buy America requirements of 49 CFR Part 661 to permit the Center City District to award a construction contract for the renovation of Dilworth Plaza, located adjacent to City Hall in Philadelphia, Pennsylvania, where no proposal submitted to CCD included a valid Buy America Certificate of Compliance.

The FTA's general requirements concerning domestic preference for the procurement of manufactured products are set forth in 49 USC § 5323(j). Under 49 USC § 5323(j)(2)(B), and the implementing regulation, 49 CFR 661.7(c), those requirements may be waived if the goods produced in the United States are not produced in a sufficient and reasonably available amount. The FTA will presume that conditions exist to grant a non-availability waiver if no responsive and responsible bid is received that offers the items produced in the United States. 49 CFR 661.7(c)(1).

Structural glass is a manufactured product. As such, it must comply with the standard set forth at 49 CFR 661.5(d): All of the manufacturing processes for the product must take place in the United States. A manufacturing process requires the alteration of materials or elements resulting in either added value or transformation of those materials or elements into a functionally different end product.

On September 20, 2011, CCD received proposals from nine general contractors. The proposals included glass panels to be utilized in the construction of two structural glass pavilions as part of the renovations. Based on research conducted in early 2011, CCD's design team concluded that no glass manufacturer had the capability to fabricate the glass panels in the United States. This is due to the size of the panels and the laminated glass make-up and edge polishing requirements. Although five proposals included a Buy America Certificate of Compliance, CCD determined that each proposer certifying compliance offered glass panels that included at least one manufacturing process occurring outside the United States.

The two all-glass entry pavilions are to be comprised of structural glass panels including glazing and other systems as follows:

a. Pavilion Walls (52 total panels): Frameless 5-ply (10mm ply) laminated heat strengthened low iron glass panels with ionoplast interlayer, DuPont™ SentryGlas or approved equal. The manufacturer must be capable of fabricating the described panel with the following dimensions - 61"x 232".

b. Pavilion Roof Panels (36 total panels): Frameless 7-ply (10mm ply) laminated heat strengthened low iron glass panels with ionoplast interlayer DuPont™ SentryGlas or approved equal. The manufacturer must be capable of fabricating the described panel with the following dimensions - 56"x 202".

The glass edges of single plies must be machine-polished. The panels must be fabricated so that all sealant joints are capable of withstanding tensile and shear stresses imposed, and capable of withstanding joint movements imposed without failing adhesively or cohesively.

To ensure consistent quality of appearance and performance, CCD has specified that the glass panels must be produced by a single manufacturer or fabricator for each kind and condition of glass indicated in the specifications, and composed of primary glass obtained from a single source for each type and class required. Heat-Treated Float Glass must be fabricated to ASTM C 1048; Type I; Quality-Q3; Class I (clear). Wall panels must be fabricated by horizontal (roller-hearth) process with roll-wave distortion parallel to bottom edge of glass as installed.

Of the manufacturing processes described above, it is FTA's understanding that facilities do not exist in the United States to perform one or more of the manufacturing processes. CCD has requested a non-availability waiver that would allow certain processes to occur outside the United States. If granted, the non-availability waiver for

this project would be limited to the specific manufacturing processes that cannot be done in the U.S. All other manufacturing processes would need to take place in the United States, as required by the Buy America rules.

In the interest of transparency, FTA has published copies of CCD's request to the docket. Interested parties may access these materials by visiting the docket site at www.regulations.gov, docket number FTA-2011-0064. Before deciding whether to grant CCD's request, FTA seeks comment from all interested parties. FTA requests that commenters describe the manufacturing process for structural glass and identify the processes that can and cannot be performed in the United States. Please submit comments by [insert date seven days after publication of notice]. Late-filed comments will be considered to the extent practicable.

Issued this _8th_ day of November, 2011.

Dorval R. Carter, Jr

Chief Counsel

[FR Doc. 2011-29525 Filed 11/15/2011 at 8:45 am; Publication Date: 11/16/2011]